

Senate Bill No. 526

Passed the Senate August 18, 2016

Secretary of the Senate

Passed the Assembly August 11, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 19006 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, Fuller. Personal income taxes: joint returns: court orders: relief from liability.

Existing law generally provides that the spouse or partner who controls the disposition of or who receives or spends community income, as well as the spouse who is taxable on the income, is liable for the payment of the taxes imposed by the Personal Income Tax Law on that income, and that whenever a joint income tax return is filed by spouses or registered domestic partners the liability for the tax is joint and several. Existing law allows, under specified conditions, a court in a proceeding for dissolution of marriage to revise the income tax liabilities on a joint return of spouses or registered domestic partners, but prohibits revisions to relieve a spouse or domestic partner of tax liability on income earned by or subject to the exclusive management and control of the spouse or domestic partner. Existing law also provides that the order revising tax liability is not effective if the gross income reportable on the return exceeds \$150,000 or the amount of the tax liability the spouse is relieved of exceeds \$7,500, except as specified.

This bill would instead provide that an order revising tax liability may relieve a spouse or domestic partner of tax liability on income earned by or subject to the exclusive management and control of that spouse or domestic partner, except if assets or liabilities are transferred between the individuals filing the joint return for the principal purpose of avoidance of the payment of tax or as part of a fraudulent scheme by those individuals or that liability is uncollectible or if, within 3 years of when the court order is effective, specified conditions apply. This bill would also instead provide that the order revising tax liability is not effective if the gross income reportable on the return exceeds \$200,000 or the amount of the tax liability the spouse is relieved of exceeds \$10,000, except as specified, and would require those amounts to

be recomputed annually beginning on January 1, 2018, as specified. The bill would apply to court orders served or acknowledged on or after the effective date of this bill.

The people of the State of California do enact as follows:

SECTION 1. Section 19006 of the Revenue and Taxation Code is amended to read:

19006. (a) The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by Part 10 (commencing with Section 17001) on that income.

(b) (1) Whenever a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several.

(2) The amount of liability on a joint return may not be reduced, but a court in a proceeding for dissolution of the marriage may determine the individual responsible for all or part of the liability, provided the order revising tax liability on the joint return:

(A) Must separately state the income tax liabilities for the taxable years for which revision of tax liability is granted.

(B) Shall not revise a tax liability that has been fully paid prior to the effective date of the order; however, any unpaid amount may be revised.

(C) Shall become effective when the Franchise Tax Board is served with or acknowledges receipt of the order.

(D) (i) Shall not be effective if the gross income reportable on the return exceeds two hundred thousand dollars (\$200,000) or the amount of tax liability the spouse is relieved of exceeds ten thousand dollars (\$10,000), unless a tax revision clearance certificate is obtained from the Franchise Tax Board and filed with the court.

(ii) Beginning on January 1, 2018, and annually thereafter, the amounts specified in clause (i) shall be recomputed in accordance with subparagraph (B) of paragraph (3) of subdivision (b) of Section 19442, modified by substituting "January 1, 2018" for "January 1, 2004."

(E) Shall not be effective to relieve a spouse of the tax liability on income earned by or subject to the exclusive management and control of that spouse if either of the following applies:

(i) Assets or liabilities are transferred between the individuals filing the joint return for the principal purpose of avoidance of the payment of tax or as part of a fraudulent scheme by those individuals.

(ii) That liability is uncollectible and, within three years of the date the court order is effective pursuant to subparagraph (C), either of the following also applies:

(I) The spouse obligated to pay that liability pursuant to the court order files for bankruptcy and that liability is discharged in bankruptcy.

(II) The spouse obligated to pay that liability pursuant to the court order becomes a nonresident.

(c) Notwithstanding subdivision (a) or paragraph (1) of subdivision (b), whenever a joint return is filed by a husband and wife and the tax liability is not fully paid, that liability, including interest and penalties, may be revised by the Franchise Tax Board as to one spouse.

(1) However, the liability shall not be revised:

(A) To relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse. The liability of the spouse for the tax, penalties, and interest due for the taxable year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income earned by or subject to the management and control of the spouse is to total gross income reportable on the return.

(B) To relieve a spouse of liability below the amount actually paid on the liability prior to the granting of relief, including credit from any other taxable year available for application to the liability.

(2) The liability may be revised only if the spouse whose liability is to be revised establishes that he or she did not know of, and had no reason to know of, the nonpayment at the time the return was filed. For purposes of this paragraph, “reason to know” means whether or not a reasonably prudent person would have had reason to know of the nonpayment.

(3) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one spouse shall be made not less than 30 days after notification of the other spouse and shall be based upon whether, under all of the facts and circumstances surrounding the nonpayment, it would be inequitable to hold the spouse requesting revision liable for the nonpayment. Any action

taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both spouses, unless, within that 30-day period, one or both spouses appeal the determination to the board as provided in Section 19045.

(4) This subdivision shall apply to all taxable years subject to the provisions of this part, but shall not apply to any taxable year which has been closed by a statute of limitations, res judicata, or otherwise.

(d) For purposes of this section, the determination of the spouse to whom items of gross income are attributable shall be made without regard to community property laws.

(e) The amendments made to this section by the act adding this subdivision shall apply to court orders served or acknowledged on or after the effective date of that act.

Approved _____, 2016

Governor